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DLOS-07 L-03 CG-00 CIAE-00 DODE-00 PM-07 H-03 INR-11

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CEQ-02 COA-02 COME-00 EB-11 EPA-04 NSF-04 SCI-06

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JUSE-00 OMB-01 CIEP-03 CEA-02 TRSE-00 OIC-04 /276 R

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TO AMEMBASSY CARACAS

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TAGS: PLOS

SUBJECT- LOS: COMMITTEE II ARTICLES ON ISLANDS

1. DEPT AGREES THAT TUNISIAN AND LA DRAFT ARTICLES ARE OBJECTIONABLE AND HARMFUL. LANGUAGE OF BOTH DRAFT ARTICLES IS IMPRECISE, RHETORICAL AND INAPPROPRIATE FOR INTERNATIONAL CONVENTION HAVING FAR-REACHING AND ENDURING LEGAL IMPORTANCE.

2. WHILE SOME STATES MIGHT ARGUE THAT TUNISIAN AND LIMITED OFFICIAL USE

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LA DRAFT ARTICLES PERTAIN TO GUAM, AMERICAN SAMOA,

VIRGIN ISLANDS (WHICH ARE ON COMMITTEE OF 24'S LIST OF NON-SELF-GOVERNING TERRITORIES), AND PUERTO RICO (NOT ON LIST), WE CONSIDER OUR TERRITORIES PART OF U.S. AND NOT UNDER "COLONIAL DOMINATION, RACIST REGIME OR FOREIGN OCCUPATION." IT IS OBVIOUS, NONETHELESS, THAT ADOPTION OF DRAFT ARTICLES COULD INVOLVE US IN DISPUTES AS TO THEIR APPLICABILITY TO OUR TERRITORIES.

3. PUERTO RICAN PEOPLE EXERCISED THEIR RIGHT OF SELF-DETERMINATION BY ADOPTING A CONSTITUTION IN A REFERENDUM OF MARCH 3, 1952, PROVIDING FOR THE ESTABLISHMENT OF A COMMONWEALTH OF PUERTO RICO FREELY ASSOCIATED WITH THE UNITED STATES. IN ITS EIGHTH SESSION UNGA ADOPTED RESOLUTION 748 RECOGNIZING THAT PUERTO RICO HAD EXERCISED SELF-DETERMINATION AND HAD ACHIEVED SELF-GOVERNMENT, AND ACCORDINGLY PUERTO RICO WAS TAKEN OFF COMMITTEE OF 24'S

LIST. GA REAFFIRMED DECISION BY REFUSING IN 1971 TO PLACE QUESTION OF PUERTO RICO ON AGENDA. PEOPLE OF PUERTO RICO REPEATEDLY HAVE REAFFIRMED IN FREE ELECTIONS DECISION TO ESTABLISH COMMONWEALTH RELATIONSHIP WITH U.S. FYI: AT CUBA'S INITIATIVE COMMITTEE OF 24 DISCUSSED PUERTO RICO IN 1972 AND 1973 DESPITE OUR STRONG OBJECTION THAT IT INAPPROPRIATE FOR COMMITTEE TO CONSIDER TERRITORY WHICH UNGA DECLARED SELF-GOVERNING IN RESOLUTION 748 AND WHICH ACCORDINGLY NOT ON COMMITTEE'S LIST OF NON-SELF-GOVERNING TERRITORIES. END FYI.

4. MALAGASY PROPOSAL, WHICH APPARENTLY ADVANCED TO SATISFY UKDEL ARGUMENTS, IS ALSO OBJECTIONABLE. MALAGASY PROPOSAL PROVIDES EXEMPTION ONLY FOR NON-INDEPENDENT TERRITORIES WHICH ARE ON COMMITTEE OF 24 LIST OF NON-SELF-GOVERNING TERRITORIES (I.E., UNDER SCRUTINY OF COMMITTEE OF 24) AND THUS IMPLIES ERRONEOUSLY, IN OUR VIEW, THAT INDEPENDENCE ONLY LEGITIMATE OPTION FOR TERRITORIES ON LIST. IT IS OUR VIEW THAT TERRITORIES WHICH DO NOT HAVE DESIRE FOR INDEPENDENCE, MAY ELECT (IN ACT OF SELF-DETERMINATION, AS DID PUERTO RICO) SELF-GOVERNING STATUS IN ASSOCIATION WITH INDEPENDENT STATE, AND THUS MERIT REMOVAL FROM LIST OF NON-SELF-GOVERNING LIMITED OFFICIAL USE

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TERRITORIES. UNDER MALAGASY PROPOSAL, IT APPEARS THAT A TERRITORY OPTING AS DID PUERTO RICO WOULD BE DENIED BENEFITS OF LOS TREATY.

5. USDEL SHOULD WORK ENERGETICALLY AGAINST TUNISIAN AND LA DRAFT ARTICLES. DELEGATION MAY WISH TO POINT OUT IN ITS REPRESENTATIONS THAT: A) "COLONIAL DOMINATION" AND "RACIST REGIME" ARE AMBIGUOUS POLITICAL TERMS

WHICH WILL CERTAINLY BE INTERPRETED DIFFERENTLY BY DIFFERENT PARTIES. THIS CAN ONLY LEAD TO DISSENSION IN IMPLEMENTATION OF ANY LOS TREATY; B) THE BASIC THRUST OF THE TUNISIAN AND LA DRAFTS IS TO DENY TO LOCAL INHABITANTS THE BENEFITS OF LOS TREATY, (I.E., THE PROPOSALS WOULD HURT THE INHABITANTS OF THE TERRITORIES MORE THAN THE "COLONIAL" POWER ADMINISTERING THEM); C) PROHIBITING AN AREA FROM ENJOYING THE RIGHTS UNDER AN LOS TREATY WHILE IMPLYING IT MUST NONETHELESS FULFILL OBLIGATIONS THEREUNDER IS APT TO UNDERMINE THE MEANINGFULNESS OF AN LOS TREATY -- ALTERNATIVELY, IF THIS PROPOSAL PLACES SUCH AREAS ENTIRELY OUTSIDE AN LOS TREATY THIS SERIOUSLY UNDERCUTS THE UNIVERSALITY WHICH ALL STATES REALIZE IS NECESSARY FOR AN EFFECTIVE LOS TREATY; D) EXCLUSION OF NON-SELF-GOVERNING TERRITORIES FROM PROVISIONS OF LOS TREATY COULD CAUSE COMPLICATIONS AND CONFLICTS WITH NEIGHBORING STATES IF AND WHEN THE STATUS OF SUCH TERRITORIES BECAME ALTERED.

6. TERRITORIES ON LIST OF NON-SELF-GOVERNING TERRITORIES ARE: SOUTHERN RHODESIA, NAMIBIA, TERRITORIES UNDER PORTUGUESE ADMINISTRATION, SPANISH SAHARA, FRENCH SOMALILAND, BRITISH HONDURAS, FALKLAND (MALVINAS) ISLAND, GIBRALTAR, ANTIGUA, DOMINICA, ST. KITTS-NEVIS-ANGUILLA, ST. LUCIA AND ST. VINCENT, COMORO ARCHIPELAGO, SEYCHELLES ISLANDS, ST. HELENA, GILBERT AND ELLICE ISLANDS, PITCAIRN ISLAND, SOLOMON ISLANDS, NEW HEBRIDES, AMERICAN SAMOA, GUAM, NIUE AND THE TOKELAU ISLANDS, TRUST TERRITORY OF THE PACIFIC ISLANDS, COCOS (KEELING) ISLANDS, PAPUA NEW GUINEA, BRUNEI, U.S. VIRGIN ISLANDS, BRITISH VIRGIN ISLANDS, BERMUDA, TURKS AND CAICAS ISLANDS, CAYMAN ISLANDS, MONTSERRAT.

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